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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Selim Yalvac

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109 7590 07/07/2009

The Dow Chemical Company
Intellectual Property Section
P.O. Box 1967
Midland, MI 48641-1967

EXAMINER

LENIHAN, JEFFREY S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

07/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/529,919	Applicant(s) YALVAC ET AL.	
	Examiner Jeffrey Lenihan	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/19/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-15, 17-19, 22, and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-15, 17-19, 22, and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the amendment filed on 03/19/2009.
2. The objections and rejections not addressed below are deemed withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Claim Rejections - 35 USC § 103

4. Claims 1-6, 10-15, 17-19, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sehanobish et al, US5861463, in view of Lai et al, US5278272.

The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference.

5. Regarding the newly added limitations to amended claims 1, 17, and 23: Sehanobish teaches a thermoplastic composition comprising at least 65% by weight of thermoplastic resin matrix (a), corresponding to claimed component A(a); at least 25% of an elastomeric impact modifier (b), corresponding to claimed component A(b); and at least 10% by weight of a substantially linear ethylene polymer (SLEP), corresponding to component (B). Based on the amount of the SLEP in the composition, the total amount matrix (a) and impact modifier (b) may be up to 90% by weight (claim 23). Said SLEP may be a copolymer of ethylene and 5 to 50% by weight of an α -olefin comonomer (claims 1, 17) (Column 6, lines 38-41). Sehanobish further recites that the composition may contain a pigment (Column 7, lines 60 to Column 8, line 9) (claim 17).

Response to Arguments

6. Applicant's arguments filed 03/19/2009 have been fully considered but they are not persuasive.

7. Applicant argues that a SLEP having the claimed Brookfield viscosity would not have the elastic recovery required for the elastomeric impact modifier component (b) of Sehanobish. The examiner notes, however, that the rejection presented in the previous Office Action stated that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a SLEP having the properties described by Lai as the third component (i.e., component (c)) of the composition of US5861463. Sehanobish does not require that the SLEP have the same properties of elastics recovery as the elastomeric impact modifier (b). This argument therefore is not found to be persuasive.

8. Applicant further argues that the data in Table 2 of Sehanobish teaches that the melt index of component (c) of the composition of US5861463 falls within the range of 0.35 to 0.5, indicating a high molecular weight. Applicant argues that one of ordinary skill in the art would not be motivated to use a SLEP having a lower molecular weight as component (c) because the % elongation at yield and at break would be decreased in the final composition.

9. It has been held that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments, *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.). Additionally, disclosed examples and preferred embodiments do not

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constitute a teaching away from a broader disclosure or nonpreferred embodiments, *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). As discussed in the previous Office Action, the only requirements recited by Sehanobish for the SLEP are that it is characterized by a molecular weight distribution that is less than 3.5, preferably 1.8 to 2.5 (Column 7, lines 30-38) and that it has a density that is at least 0.04 g/cm³ higher than the density of the elastomeric impact modifier component (b) (Column 7, lines 39-44). Furthermore, Sehanobish is not concerned solely with the % elongation at break and at yield as applicant appears to argue; rather, Sehanobish is directed towards the development of thermoplastic compositions having improved processability, improved stiffness, improved low temperature impact strength, etc. (abstract).

10. Lai teaches that the SLEPs of US5278272 are characterized by improved processability (abstract), improved mechanical strength (Column 2, lines 33-40), and can be added to polyolefins such as high density polyethylene (HDPE) to improve the low temperature impact strength of said polyolefin (Column 15, lines 40-45 and 60-63). As the SLEPs of Lai meet the criteria of molecular weight distribution and density required by Sehanobish, the examiner therefore maintains the position that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the composition of Sehanobish by substituting the SLEP of Lai for component (c) of the composition of US5861463, with the reasonable expectation of producing a polymer composition characterized by the desired properties of improved processability and improved low temperature impact strength.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Lenihan whose telephone number is (571)270-5452. The examiner can normally be reached on Monday through Thursday from 7:30-5:00 PM, and on alternate Fridays from 7:30-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/
Primary Examiner, Art Unit 1796

Jeffrey Lenihan
Examiner, Art Unit 1796

/JL/